

**IN THE SUPREME COURT OF THE STATE OF UTAH**

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MARK CHRISTOPHER TRACY d/b/a  
Emigration Canyon Home Owners  
Association

Petitioner,

v.

THE HONORABLE MARK S. KOURIS,

Respondent,

SIMPLIFI COMPANY, JENNIFER  
HAWKES, and ERIC HAWKES

Real Parties in Interest.

Case No.

---

**BRIEF OF PETITIONER**

*On Petition for Writ of Extraordinary Relief from Amended Judgment, Orders of Filing,  
Minute Entries, and Writ of Execution Issued by the Honorable Mark S. Kouris,  
Utah State Third District Court Judge, Case No. 200905074*

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*Pro Se Petitioner*

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**LIST OF PARTIES TO THE PROCEEDINGS BELOW AND  
REQUESTED RELIEF**

The parties to the proceedings below are Mark Christopher Tracy (“Mr. Tracy”) d/b/a Emigration Canyon Home Owners Association (“The ECHO-Association”) as Petitioner for court ordered disclosure of government documents in the sole custody of the Real Parties in Interest and Respondents below Simplifi Company, Emigration Canyon Deputy Mayor Jennifer Hawkes and Eric Hawkes (collectively and hereafter “Simplifi Respondents”) as the Public Records Office of Emigration Improvement District (“EID” aka Emigration Canyon Improvement District aka ECID).<sup>1</sup>

Mr. Tracy seeks writ of extraordinary relief from the Amended Judgment, Orders of Filing, Minute Entries, and Writ of Execution issued by the Presiding Judge of the Utah Third District Court and Respondent Mark S. Kouris.

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<sup>1</sup> As EID does not retain public records per Utah Code Ann. § 63G-2-204(1)(a) it was not a party to the proceedings below.

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**IN THE SUPREME COURT OF THE STATE OF UTAH**

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|---|--|
| <p>MARK CHRISTOPHER TRACY d/b/a<br/>Emigration Canyon Home Owners<br/>Association</p> <p style="text-align: center;">Petitioner,</p> <p>v.</p> <p>THE HONORABLE MARK S. KOURIS,</p> <p style="text-align: center;">Respondent,</p> <p>SIMPLIFI COMPANY, JENNIFER<br/>HAWKES, and ERIC HAWKES</p> <p style="text-align: center;">Real Parties in Interest.</p> | <p style="text-align: center;"><b>PETITION FOR WRIT OF<br/>EXTRAORDINARY RELIEF<br/>FROM AMENDED JUDGMENT,<br/>ORDERS OF FILING, MINUTE<br/>ENTRIES AND WRIT OF<br/>EXECUTION</b></p><br><br><p>Case No.</p><br><br><p>District Court Case No. 200905074</p> |
|---|--|

**NATURE OF THE PROCEEDINGS**

Petitioner Mark Christopher Tracy (“Mr. Tracy”) is a federal whistleblower in what has alleged to be the longest, most lucrative, and perhaps most economically destructive water grabs in the history of the State of Utah.<sup>2</sup>

To secure public documents germane to pending state and federal litigation against Real Party of Interest Eric Hawkes (“Mr. Hawkes”) *et al.* in the sole custody of Simplifi Respondents as the EID Public Records Office,<sup>3</sup> Mr. Tracy submitted lawful requests under

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<sup>2</sup> See *e.g.*, audio-video recording entitled “Aerial and Ground Recording of the Emigration Oaks PUD (YouTube)” available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=3310](https://echo-association.com/?page_id=3310); see also *United States of America ex rel. Mark Christopher Tracy v. Emigration Improvement District et al.*, No. 21-4051 (10th Cir. pending) and *Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, No. 20200295 (Utah Ct. App. pending).

<sup>3</sup> See Utah Code Ann. § 63G-2-103(11)(b)(i).

the Utah Government Records Access and Management Act (“GRAMA”) to the same. Upon nonresponse and following Mr. Tracy’s appeal to the chief administrative officer, Mr. Hawkes transmitted a duplicitous data file with the alleged intent of concealing groundwater mining and lead contamination of public drinking water system No. 18143 operated by Simplifi Respondents. Mr. Tracy commenced legal action for court ordered disclosure and injunctive relief.

The instant petition arises out of the refusal of district court judge Mark S. Kouris, presiding judge of the Utah Third District Court (“Judge Kouris”), to record and docket motions, objections and notice of appeal timely submitted to the court by Mr. Tracy based upon a purported (but nonexistent) prefiling order in pending litigation issued by Judge Kouris.<sup>4</sup>

### **JURISDICTION**

This Court has original jurisdiction to grant writ of extraordinary relief under Utah Code Ann. § 78A-3-102(2) and Utah R. App. P. 19 in connection with Utah R. Civ. P. 65B(d)(1).

### **WAIVER OF FILING FEE**

Mr. Tracy requests waiver of filing fee pursuant to Utah R. App. P. 19(b)(8).

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<sup>4</sup> In both the *Decision and Order Denying Motion to Vacate, Awarding Attorney Fees and Finding Petitioner Mark Christopher Tracy to Be a Vexatious Litigant and Subject to Rule 83 of the Utah Rules of Civil Procedure* [Addendum 2] and the *Amended Judgment* [Addendum 3], the district court incorrectly cited Utah R. Civ. P. 83(b)(4) and not subsection (b)(5) when Judge Kouris ordered Mr. Tracy to obtain leave of the court “prior to filing *any future claim for relief* in a Utah State court” (emphasis added).

## ISSUES FOR REVIEW

**ISSUE 1.** Does the district court have jurisdiction to amend judgment during appellate review before the Utah State Supreme Court and then order the Salt Lake County Sheriff to seize and sale the appellate litigation at public auction?<sup>5</sup>

Standard of Review: This Court may grant relief if an inferior court exceeds its jurisdiction or fails to perform an act required by law as a duty of office, trust, or station. Utah R. Civ. P. 65B(d)(2)(A) and (B).

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Objection to Form of Amended Judgment* [Addendum No. 5], *Motion to Vacate Filing Order*, [Addendum No. 7] and *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* [Addendum No. 8].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists: Mr. Tracy's *Objection to Form of Amended Judgment* dated April 28, 2021 [Addendum No. 5], was rejected by Judge Kouris on April 29, 2021, based upon a purported (but nonexistent) pre-filing order in pending litigation [Addenda Nos. 6, 2 and 3]. Similarly, Mr. Tracy's *Notice of Appeal of the Amended Judgment* dated June 10, 2021 [Addendum No. 9] and

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<sup>5</sup> Mr. Tracy filed *Notice of Appeal of Judgment* on March 26, 2021 [Addendum No. 1]. Judge Kouris executed the Amended Judgment on April 28, 2021 [Addendum No. 3] and the Utah Supreme Court transferred appellate jurisdiction of Judge Kouris' initial judgment to the Utah Court of Appeals on May 9, 2021 [Addendum No. 4]. *See Mark Christopher Tracy v. Simplifi et al.*, Case No. 20210227 (Utah Ct. App. pending). The case is currently stayed following the issuance of the Court's ruling in case no. 20200705-CA. *See* Corrected Order, available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=8229](https://echo-association.com/?page_id=8229); *see also Tracy v. Simplifi et al.*, Case No. 20200705 (Utah Ct. App. September 14, 2021).

*Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* dated August 10, 2021 [Addendum No. 8] was rejected by Judge Kouris on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3]. This Court returned Mr. Tracy’s Docketing Statement on September 29, 2021 [Addendum No. 11].

**ISSUE 2.** May a Utah district court rule that a federal whistleblower’s lawful and constitutionally protected right to request government documents in the sole custody of the Public Records Office of a governmental entity constitutes “harassment” under Utah R. Civ. P. 11(b)(1) and he must therefore obtain leave of the court prior to filing any future claim for relief per subsection (c)(2) in connection with Utah R. Civ. P. 83(b)(5) as a vexatious litigant?

Standard of Review: This issue is a question of law. *See generally State v. Stirba*, 972 P.2d 918 (Utah Ct. App. 1998) (reviewing question of whether state can obtain extraordinary relief for a question of law). To grant extraordinary relief under Rule, Utah R. Civ P. 65B(d)(2)(A), the trial court must have committed a gross and flagrant abuse of discretion. *Stirba*, 972 P.2d at 923; *Renn v. Utah State Bd. of Pardons*, 904 P.2d 677, 683 (Utah 1995).

Preservation: On its own motion, the district court ruled that Mr. Tracy was a vexatious litigant under Utah R. Civ. P. 11(c)(1)(B) in connection with Rule 83(b)(4) but did not provide Mr. Tracy notice and a reasonable opportunity to respond as required under Utah R. Civ. P. 11(c). Mr. Tracy filed *Notice of Appeal of the Amended Judgement* upon receipt of the Amended Judgement executed by the court [Addenda Nos. 3 and 9].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists: When a party cannot appeal a district court’s order, a petitioner has “no alternative course to follow” and thus Rule 65B “provides the [petitioner] with its sole means to obtain a ‘plain, speedy and adequate remedy’ for the district court's alleged abuse of discretion.” *Stirba*, 972 P.2d at 921 (citing *Society of Profl Journalists v. Bullock*, 743 P.2d 1166, 1168 (Utah 1987)). Mr. Tracy’s *Notice of Appeal of Amended Judgment* dated June 10, 2021 [Addendum No. 9] was rejected by Judge Kouris on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3].

**ISSUE 3.** Does district court have jurisdiction to order the Salt Lake County Sheriff to seize federal appellate proceedings pending before the United States Court of Appeals for the 10th Circuit in Denver, Colorado, and sale at public auction?

Standard of Review: This Court may grant relief if an inferior court exceeds its jurisdiction or fails to perform an act required by law as a duty of office, trust, or station. Utah R. Civ. P. 65B(d)(2)(A) and (B).

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* [Addendum No. 8], *Motion to Vacate Order to Attend Hearing to Identify Judgment Debtor’s Property* [Addendum No. 13], *Opposition to Order for Debtor to Attend Hearing to Identify Judgment Debtor’s Property* [Addendum No. 14].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists: Mr. Tracy’s *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* dated August 10,

2021 [Addendum No. 8] was rejected by Judge Kouris on September 3, 2021, based upon a purported (but nonexistent) prefiling order [Addenda Nos. 10, 2 and 3].

**ISSUE 4.** Does the presiding judge of the Utah Third District Court have jurisdiction to order denial of joinder motions in separate proceedings not before the court based upon a purported (but nonexistent) prefiling order in pending litigation?

Standard of Review: This Court may grant relief if an inferior court exceeds its jurisdiction or fails to perform an act required by law as a duty of office, trust, or station. Utah R. Civ. P. 65B(d)(2)(A) and (B).

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Motion to Vacate Filing Order* [Addendum No. 7], and *Objection to Minute Entry and Order Issued by the Presiding Judge of the Utah Third District Court* [Addendum No. 17].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists: Following issuance of the Minute Entry by Judge Kouris [Addendum No. 16], Utah 3rd District Court Judge Keith Kelly ruled that “Mr. Tracy has not received approval to file his intervention motion in this case. (Docket #22)” [Addendum No. 18]. Mr. Tracy’s *Objection to Minute Entry and Order Issued by the Presiding Judge of the Utah Third District Court* dated August 10, 2021 [Addendum No. 17] was rejected by Judge Kouris on September 3, 2021, based upon a purported (but nonexistent) prefiling order [Addenda Nos. 10, 2 and 3]. As

a non-party to the proceedings before Judge Kelly, Mr. Tracy lacks legal standing to correct the court record or appeal the order.<sup>6</sup>

**Issue No. 5.** Does the district court have jurisdiction to order appearance of a judgment debtor to identify personal and real property under sworn testimony without proper notice and service of process required under Utah R. of Civ. P. 62(a), 54(e) and Rule 7A (d) in connection with Rule 4 (2)(A)(1)(C)?

Standard of Review: This Court may grant relief if an inferior court exceeds its jurisdiction or fails to perform an act required by law as a duty of office, trust, or station. Utah R. of Civ. P 65B(d)(2)(A) and (B).

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Motion to Vacate Order to Attend Hearing to Identify Judgment Debtor's Property* [Addendum No. 13], and *Opposition to Order for Debtor to Attend Hearing to Identify Judgment Debtor's Property* [Addendum No. 14].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists:

Mr. Tracy's *Motion to Vacate Order to Attend Hearing to Identify Judgment Debtor's Property* dated June 22, 2021 [Addendum No. 13] and *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* dated August 10, 2021 [Addendum No. 8] was rejected by Judge Kouris in the *Order of Filing* on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3].

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<sup>6</sup> To date, Judge Mow has not issued a decision of Mr. Tracy's Motion to join Petitioner Dr. Onysko as co-petitioner.

**Issue No. 6.** Does the district court have jurisdiction to order the Salt Lake County Sheriff to seize pending federal litigation for exempt employment wages and sale the same at public auction?

Standard of Review: This Court may grant relief if an inferior court exceeds its jurisdiction or fails to perform an act required by law as a duty of office, trust, or station. Utah R. of Civ. P 65B(d)(2)(A) and (B).

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* [Addendum No. 8].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists:

Mr. Tracy’s *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* dated August 10, 2021 [*id.*] was rejected by Judge Kouris in the *Order of Filing* on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3].

**Issue No. 7.** Does the district court have jurisdiction to order the Salt Lake County Sheriff to seize water rights belonging to an unincorporated association and not the judgment debtor and sale the same at public auction?

Standard of Review: This Court may grant relief if an inferior court exceeds its jurisdiction or fails to perform an act required by law as a duty of office, trust, or station. Utah R. of Civ. P 65B(d)(2)(A) and (B).

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* [Addendum No. 8].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists:

Mr. Tracy’s *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E)* dated August 10, 2021 [*id.*] was rejected by Judge Kouris in the *Order of Filing* on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3].

**Issue No. 8.** Does the district court have jurisdiction to prevent and/or hinder appellate review by refusing to docket and record motions, objections and notice of appeal in the court record?

Preservation: Although not required under Utah R. App. P. 19, this issue was preserved in the district court, *see Motion to Vacate Filing Order* [Addendum No. 7].

Statement Why No Other Plain, Speedy or Adequate Remedy Exists: Mr. Tracy’s *Motion to Vacate Filing Order* dated May 4, 2021 [*id.*] was rejected by Judge Kouris on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3]. Mr. Tracy’s *Notice of Appeal of Amended Judgment* dated June 10, 2021 [Addendum No. 9] was rejected by Judge Kouris on September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 10, 2 and 3]. This Court returned Mr. Tracy’s Docketing Statement on September 29, 2021 [Addendum 11].

## DETERMINATIVE STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

United States Constitution, Amendment XIV.

... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws ...

Utah Code Ann. § 63G-2-102. Legislative Intent.

(1) In enacting this act, the Legislature recognizes two constitutional rights:

- (a) the public's right of access to information concerning the conduct of the public's business, and
- (b) the right of privacy in relation to personal data gathered by governmental entities.

Utah R. Civ. P. 83.

### **(a) Definitions.**

(1) The court may find a person to be a "vexatious litigant" if the person, with or without legal representation, including an attorney acting pro se, does any of the following:

...

(B) After a claim for relief or an issue of fact or law in the claim *has been finally determined*, the person two or more additional times re-litigates or attempts to re-litigate the claim, the issue of fact or law, or the validity of the determination against the same party in whose favor the claim or issue was determined.

(C) In any action, the person *three or more times* does any one or any combination of the following:

- (i) files unmeritorious pleadings or other papers,
- (ii) files pleadings or other papers that contain redundant, immaterial, impertinent or scandalous matter,

(iii) conducts unnecessary discovery or discovery that is not proportional to what is at stake in the litigation, or

(iv) engages in tactics that are frivolous or solely for the purpose of harassment or delay.

**(b) Vexatious litigant orders.** The court may, on its own motion or on the motion of any party, enter an order requiring a vexatious litigant to:

(1) furnish security to assure payment of the moving party's reasonable expenses, costs and, if authorized, attorney fees incurred in a pending action;

(2) obtain legal counsel before proceeding in a pending action;

(3) obtain legal counsel before filing any future claim for relief;

(4) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court before filing any paper, pleading, or motion *in a pending action*;

(5) abide by a prefiling order requiring the vexatious litigant to obtain leave of the court *before filing any future claim* for relief in any court; *or*

(6) take any other action reasonably necessary to curb the vexatious litigant's abusive conduct (emphasis added).

**(c) Necessary findings and security.**

(1) Before entering an order under subparagraph (b), the court *must find by clear and convincing evidence* that:

(A) the party subject to the order is a vexatious litigant; and

(B) there is no reasonable probability that the vexatious litigant will prevail on the claim (emphasis added).

**(d) Prefiling orders in a pending action.**

(1) If a vexatious litigant is subject to a prefiling order in a pending action requiring leave of the court to file any paper, pleading, or motion, the vexatious

litigant shall submit any proposed paper, pleading, or motion to the judge assigned to the case and must:

(A) demonstrate that the paper, pleading, or motion is based on a good faith dispute of the facts;

(B) demonstrate that the paper, pleading, or motion is warranted under existing law or a good faith argument for the extension, modification, or reversal of existing law;

(C) include an oath, affirmation or declaration under criminal penalty that the proposed paper, pleading or motion is not filed for the purpose of harassment or delay and contains no redundant, immaterial, impertinent or scandalous matter

...

### **STATEMENT OF FACTS**

1. In 1966, the Division Director of the Utah Division of Water Rights (“State Engineer”) concluded that the operation of large-diameter commercial wells in the Canyon would impair existing senior water rights with “almost certainty” and then closed the area to new water use applications due to the “full appropriation” of surface and underground water sources [Petition at page 4, no. 11].
2. In 1983, The Boyer Company LC stripped surface water rights from the only active federal military cemetery created by an Act of Congress, and signed into law by United States President Ulysses S. Grant, to service the luxurious Emigration Oaks Private Urban Developments via two (2) large-diameter commercial wells of public water system 18143 (“Boyer Water System”) [Petition at Exhibit Q, page 2].<sup>7</sup>

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<sup>7</sup> See also open letter to United States congressional representatives at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=6908](https://echo-association.com/?page_id=6908).

3. Boyer Well No. 1 tested positive for traces of lead on March 19, 1997, and Boyer Wells No. 2 tested twice the federal action level limit for lead contamination in drinking water on April 18, 1994 [Petition at pages 10-11 at no. 32].
4. On December 15, 1995, EID testified to the State Engineer that the operation of large-diameter commercial wells in the Canyon's Freeze Creek drainage area would interrupt surface water flow of the Canyon Stream at Utah's Hogle Zoo "for decades...25, 50, 75 years" [Petition at page 5, no. 14].<sup>8</sup>
5. In August 1998, EID acquired legal title of the Boyer Water System and transferred operation of the same to EID Trustee Chairman Fred A. Smolka's private Utah corporation Management Enterprises L.L.C., with Mr. Smolka assuming the title of EID General Manger, EID Financial Manager and EID Election Specialist as an "independent contractor" thereby effectively privatizing the Utah special service water district [Petition at page 6, footnote no. 5].
6. Sometime in 2013, EID trustees awarded the same no-bid contract to the private Utah corporation Simplifi Company with the sole shareholders Emigration Canyon Deputy Mayor Jennifer Hawkes and Mr. Hawkes assuming the title of "EID Public Records Office" operated out of their private residence [Petition at page 10, nos. 29, 30 and Addendum No. 12 at Exhibit D].

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<sup>8</sup> See audio recording and illustrative diagrams entitled "Utah State Engineer Hearing – Barnett Testimony (December 15, 1995)" available at the website administered by the ECHO-Association at [https://echo-association.com/?page\\_id=2204](https://echo-association.com/?page_id=2204).

7. In September 2014, Mr. Tracy commenced legal action under the federal False Claims Act,<sup>9</sup> against EID trustees, managers and consultants including Mr. Hawkes and private land-developers R. Steve Creamer, The Boyer Company LC and City Development Inc., alleging *inter alia* the fraudulently acquisition and diversion of \$6.3 million dollars of federally-backed funds for the massive development of luxurious, high-end estates in the Canyon at public expense, extraordinary private profit and contrary to expert hydrology reports published by State Engineer and EID's own hydrologist warning against groundwater mining of Canyon aquifers and depletion of the Canyon Stream ("FCA Litigation").<sup>10</sup>
8. Mr. Tracy has collected and reviewed thousands of documents, hundreds of hours of voice recordings and conducted independent testing of contaminated groundwater in the Canyon's Twin Creek Aquifer and is thus able to cross-reference public records for accuracy and completeness to determine if requested documents have been purposely manipulated or withheld in response to a lawful and constitutionally protected GRAMA request [Petition throughout].
9. In September 2018, the Canyon stream suffered total depletion less than two (2) miles from Utah's Hogle Zoo for the first time on record<sup>11</sup> as predicted by EID's own hydrologist in testimony presented by the Salt Lake City law firm Parsons

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<sup>9</sup> 31 U.S.C. §§ 3729 – 3733.

<sup>10</sup> Footnote no. 3 *supra*.

<sup>11</sup> See Salt Lake Tribune article entitled "Salt Lake Tribune – "Why is Emigration Creek — a Historic Utah Waterway — Dry?" by Brian Maffly at the at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=405](https://echo-association.com/?page_id=405).

Kinghorn Peters P.C.<sup>12</sup> to the State Engineer on December 15, 1995 [Petition at page 7, no. 19].

10. In October 2018, Mr. Tracy commenced legal action against EID and the State Engineer to prevent issuance of over 500 water letters for future development in the Canyon and further groundwater mining of Canyon's Twin Creek Aquifer currently pending before the Utah Court of Appeals ("Emigration Canyon Water Rights Litigation").<sup>13</sup>
11. In October 2019, Mr. Hawkes falsely reported on the internet platform "Nextdoor" that the Boyer Water System had "never" exceeded federal drinking water standards for lead contamination and then speculated without basis that individual homes were the "likely" cause of tainted test results [Petition at page 11, no. 36].<sup>14</sup>
12. To secure public documents germane to pending state and federal proceedings in the sole custody of Simplifi Respondents, Mr. Tracy submitted GRAMA requests to Simplifi Respondents as the EID Public Records Office for lead contamination laboratory test results ("Lead-Contamination GRAMA")<sup>15</sup> and water levels of EID

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<sup>12</sup> Predecessor in interest to Parson Kinghorn Harris P.C. and Simplifi Respondents' current legal counsel Cohne Kinghorn P.C.

<sup>13</sup> *Emigration Canyon Home Owners Association v. Kent L. Jones and Emigration Improvement District*, Case No. 20200295 (Utah Ct. App. pending).

<sup>14</sup> See electronic documents posted under the title "Postings on Internet Platform 'Nextdoor' (Oct 29, 2019)" at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=4955](https://echo-association.com/?page_id=4955);

<sup>15</sup> See Audio-Video Recording entitled "Refusal to Disclose Lead Testing – EID Trustee Meeting (June 11, 2020)" available at the website administered by The ECHO-Association at [https://echo-association.com/?page\\_id=1661](https://echo-association.com/?page_id=1661).

production and monitor wells (*i.e.*, telemetry data) (“Groundwater Mining GRAMA”) [Petition at Exhibit AA].

13. Following appeal to and upon nonresponse from the EID chief administrative officer Michael Scott Hughes, Mr. Tracy filed legal actions against Simplifi Respondents on July 31, 2000, and August 10, 2020 (“Lead-Contamination Lawsuit” and “Groundwater-Mining Lawsuit” respectively) alleging willful violations of GRAMA provisions.
14. Judge Faust of the Utah Third District Court dismissed the Lead-Contamination Lawsuit ruling that a private Utah corporation and the sole controlling shareholders are exempt from GRAMA (“Faust Ruling”).<sup>16</sup>
15. Upon Mr. Tracy’s timely appeal of the Faust Ruling on September 17, 2020, and pursuant to Utah R. Civ. P. 4(b) (service of summons and complaint within 120 days of court filing) Mr. Tracy served Simplifi Respondents the Groundwater-Mining Lawsuit on December 7, 2020.
16. Judge Kouris denied Mr. Tracy’s motion to stay proceedings during appellate review of the Faust Ruling of the Lead-Contamination Lawsuit and granted Simplifi Respondents’ Rule 12(b)(6) motion to dismiss awarding attorney fees against Mr. Tracy in the amount of \$5,758.50 due to the fact that “Respondents are not governmental entities” and the petition was “not about obtaining [public] records...

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<sup>16</sup> *Mark Christopher Tracy v. Simplifi et al.*, Case No. 20200705 (Utah Ct. App. September 14, 2021).

but instead about attacking and harassing Mr. and Mrs. Hawkes” (“Kouris Judgment”) [Addendum No. 15 at pages 4 and 5].

17. Mr. Tracy timely appealed the Kouris Judgment.
18. Following confirmation of Simplifi Respondents’ status as the “EID Public Records Office” by Simplifi Respondents’ and EID legal counsel Jeremy R. Cook of Cohne Kinghorn P.C. (“Utah Attorney Cook”) [Addendum No. 12 at Exhibit D] contrary to factual representations previously presented to (and accepted by) the district court by the moving party of a Rule 12(b)(6) motion to dismiss, Mr. Tracy filed *Motion to Vacate Memorandum Decision and Judgment* pursuant to Utah R. Civil P. 60(b) [Addendum No. 12].
19. Judge Kouris ruled that the confirmation of Simplifi Respondents’ status as “EID Public Records Office” contrary to previous factual representations presented to the district court by Utah Attorney Cook “is not reflective of the law” and the “rule is what the rule is and the rule says that you must ask a government agency... and not people in their personal capacity [for government records]” and denied Mr. Tracy’s motion to vacate judgment [Addendum No. 18 at page 7 and Addendum No. 2].
20. Judge Kouris increased Simplifi Respondents’ award of legal fees from \$5,758.50 to \$9,029.00 and ruled that Mr. Tracy was a vexatious litigant under Utah R. Civ. P. 11 and 83 due to the fact than Mr. Tracy “had been informed” six (6) times by the Utah State Records Committee and Simplifi Respondents’ legal counsel Utah Attorney Cook that a private Utah company and controlling shareholders in sole

custody of public records are exempt from GRAMA (“Kouris Amended Judgment”) [Addenda Nos. 2 and 3].

21. Judge Kouris failed to provide Mr. Tracy notice and opportunity to show cause why Mr. Tracy’s conduct was not vexatious per Utah R. Civ. P. 11(c)(2) in connection with 83(b)(5)<sup>17</sup> thereby requiring leave from the Presiding Judge of the Court [*i.e.*, Judge Kouris] “prior to filing *any future actions* in Utah State courts” (emphasis added) [Addendum No. 2 at page 6 and Addendum No. 3 at page 2].
22. Seven (7) days after Mr. Tracy received a copy of the Kouris Amended Judgment, the district court ordered Mr. Tracy to appear before the district court in 20 days to provide sworn testimony to Utah Attorney Cook as judgment debtor [Addendum No. 13].
23. In the subsequent Writ of Execution, Judge Kouris ordered the Salt Lake County Sheriff to seize the FCA Litigation pending before the United States Court of Appeals for the 10th Circuit, as well as the Faust Ruling, Kouris Judgment and Emigration Canyon Water Rights Litigation pending before the Utah Court of Appeals as “personal property” of Mr. Tracy as judgment debtor [Addendum No. 20].
24. Judge Kouris further ordered Utah State Third District Court Judges Adam T. Mow and Keith Kelly to deny Mr. Tracy’s motions to join active litigation seeking disclosure of the same public records of lead-contamination of drinking water

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<sup>17</sup> Mr. Tracy was not served a copy of the Kouris Amended Judgment by Utah Attorney Cook until June 10, 2021.

commenced by federal whistleblower Dr. Steve J. Onysko against EID and the Utah State Division of Drinking Water (“DDW”) based upon a purported (but nonexistent) prefiling order in pending litigation [Addendum No. 16].

25. Judge Kouris withheld all motions, objections and notice of appeal of the Kouris Amended Judgment timely submitted to the court by Mr. Tracy since April 28, 2021, and returned the same to Mr. Tracy on April 29 and September 3, 2021, based upon a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 6, 10, 2 and 3].
26. On September 29, 2021, the Utah Supreme Court returned Mr. Tracy’s docketing statement of the Kouris Amended Judgment leading to the present petition for extraordinary relief [Addendum No. 11].

### **SUMMARY OF ARGUMENT**

The present petition for writ of extraordinary relief documents judicial conduct patently outside the district court’s jurisdiction as well as gross and flagrant abuse of discretion intended to prevent appellate review of blatantly defective rulings, thwart disclosure of public records germane to pending state and federal litigation regarding groundwater mining and corresponding lead contamination of drinking water, and to obstruct rulings by the Utah Court of Appeal and United States Court of Appeals for the 10th Circuit.

The instant petition for writ of extraordinary relief is necessary and proper.

## ARGUMENT

### I. THE DISTRICT COURT LACKED JURISDICTION TO AMEND JUDGMENT DURING APPELLATE REVIEW AND THEN ORDER THE SALT LAKE COUNTY SHERIFF TO SEIZE AND SELL THE APPELLATE PROCEEDINGS AT PUBLIC AUCTION

It is well recognized that the district court is divested of jurisdiction to amend judgment during appellate review. *White v. State*, 795 P.2d 648, 650 (Utah 1990) (per curiam), (“[the] court ha[d] long followed the general rule that the trial court is divested of jurisdiction over a case while it is under advisement on appeal.”).

However, following the express certification of Simplifi Respondents’ status as the “EID Public Records Office” [Addendum No. 12 at Exhibit D] contrary to the factual representations previously presented to the district court by Simplifi Respondents’ legal counsel Utah Attorney Cook, the district court did however retain jurisdiction to consider Mr. Tracy’s Rule 60(b) Motion to Vacate Judgment [Addendum No. 12] during appellate review.

In *National Advertising Company v. Murray City Corporation*, 2006 UT App 75, the court ruled:

As set forth in *White* . . . the proper procedure for considering a rule 60(b) motion during the pendency of an appeal is threefold. First, as long as the trial court's adjudication of the rule 60(b) motion does not impact the legal issues raised on appeal, the trial court should consider the motion and, if appropriate, deny it without interference from [the appellate courts]. Second, if the trial court does grant such a motion, the trial court . . . need only advise this court that the judgment has been modified. [And t]he district court action granting or denying the motion . . . should be included in the record when it is prepared for review by [the appellate court]. Third, if the rule 60(b) motion does in fact impact the legal issues being considered on appeal, and the trial court is inclined to grant the motion,

“counsel should obtain a brief memorandum to that effect from the trial court, and request an order of remand from the appellate court so that the trial court can enter an order” *Id.* at ¶ 22 (internal citations and quotations omitted).

As such, it is clear that the district court’s authority was limited to either granting or denying Mr. Tracy’s Rule 60(b) motion to vacate, but was divested of jurisdiction to enter additional factual findings and legal conclusions that Mr. Tracy’s conduct was “harrasing” and “vexatious” under Rules 11(b)(1) and 83(b)(5) for having had “been informed” that a private Utah company and the controlling shareholder in sole possession of government records were exempt from GRAMA provisions, as that legal issue was pending before this Court.

The district court was also devoid of jurisdiction to issue a Writ of Execution ordering the Salt Lake County Sheriff to seize pending appellate proceedings of the Faust Ruling, the Kouris Judgment, and the Emigration Water Rights Litigation and sale at public auction as “personal property” of Mr. Tracy.

Notwithstanding that Mr. Tracy’s petitions for de novo judicial review of denied requests to access government documents related to lead contamination, groundwater mining and the State Engineer’s approval of permanent changes to EID water rights are not “personal property” of Mr. Tracy under Utah R. Civ. P. 64(a)(9), it is recognized by this Court that appellate rights are not subject to a Writ of Execution and/or Certificate of Sale. *ASC Utah, Inc. v. Wolf Mountain Resorts*, 2013 UT 24.

Specifically, this Court determined that a “claim” refers to a “demand for affirmative relief” as opposed to a defense or right to appeal and is thus unaffected by either a Writ of Execution or Certificate of Sale. *Id.* at ¶ 9.

The district court was divested of jurisdiction to modify judgment during appellate proceedings and similarly lacked jurisdiction to order the seizure and sale of Mr. Tracy’s right to appeal at public auction.

II. IT IS A GROSS AND FLAGERANT ABUSE OF DISTRETION FOR THE DISTRICT COURT TO RULE THAT A LAWFUL AND CONSTITUTIONALLY PROTECTED RIGHT TO REQUEST ACCESS TO GOVERNMENT RECORDS IN CUSTODY OF A PUBLIC RECORDS OFFICE IS "HARASSMENT" AND "VEXATIOUS" UNDER RULES 11 AND 83

In addition to the district court’s lack of jurisdiciton to amend judgment during appellate review, and order the seizure of Mr. Tracy’s right to apeal, the ruling of Judge Kouris that Mr. Tracy is a vexatious litigant under Utah R. Civ. P. 11 and 83 was also a gross and flagrant abuse of discretion on multiple grounds.

First, the public’s right of access to information concerning the conduct of the people’ business is a recognized consttutional right in the State of Utah<sup>18</sup> and may not be inferred with by the district court.

Second, Utah R. Civ. P. 83 (a)(B) allows the district court to sanction conduct only where there has been a “final disposition” of a legal issue and yet the party “*two or more*

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<sup>18</sup> Utah Code Ann. § 63G-2-102(1)(a).

*additional times* re-litigates or attempts to re-litigate the claim...against the same party” (emphasis added).

In the instant case, the district court was specifically informed by Mr. Tracy that the Faust Ruling had been fully briefed and was pending before the Utah Court of Appeals. Mr. Tracy also petitioned the district court to stay proceedings until final disposition of the appeal [Addendum No. 18 at page 22]. Contrary to the district court’s findings, service of a complaint and summons as mandated under Utah R. Civ. P. 4(b) is not “re-litigation” or an “attempt to relitigate a claim *two or more additional times*” (emphasis added) [*id.*].

Next, the district court’s cursory recital that Mr. Tracy’s petition for de novo judicial review “included redundant and immaterial allegations” and was therefore “frivolous and filed for the purpose of harassment” under Utah R. Civ. P. 83(a)(C) is an unsupported assertion as the district court failed to cite any specific allegation in the petition or conduct, which occurred “three or more times.”

Lastly, under Utah R. Civ. P. 83(c) the court must find by clear and convincing evidence, that the “party subject to the order is a vexatious litigant; *and* there is no reasonable probability that the vexatious litigant will prevail on the claim” (emphasis added).

The district court made no effort to document any clear and convincing evidence, and did not cite binding legal authority that a private corporation and controlling shareholders are immune for willful violation GRAMA provisions as alleged. The district court’s cursory recital that Mr. Tracy “was informed” by the Utah State Records Committee and Simplifi Respondents’ legal counsel Utah Attorney Cook that inclusion of

Simplifi Respondents in a lawful and constitutionally protected request for disclosure of public records was “improper,” is devoid of legal relevance.

The Kouris Amended Judgment is a gross and flagrant abuse of discretion under the requirements of Utah R. Civ. P. 11 and 83 in light of Mr. Tracy’s constitutional right to access public records maintained by a Public Records Office pursuant to Utah Code Ann. § 63G-2-102(1)(a).

III. THE DISTRICT COURT LACKED JURISDICTION TO ORDER  
THE SALT LAKE COUNTY SHERIFF TO SEIZE FEDERAL LITIGATION  
PENDING BEFORE THE UNITED STATES COURT OF APPEALS  
FOR THE 10TH CIRCUIT AND SALE AT PUBLIC AUCTION

For the aforementioned reasons, the district court lacked jurisdiction to order the Salt Lake County Sheriff to seize and sell federal appellate proceedings at public auction.<sup>19</sup>

IV. THE DISTRICT COURT LACKED JURISDICTION TO ORDER  
DENIAL OF MOTIONS PENDING IN SEPARATE STATE  
PROCEEDINGS NOT BEFORE THE COURT

For the aforementioned reasons, the district Court lacked jurisdiction to order Utah Third Distict Court Judges Mow and Kelly to deny Mr. Tracy’s motions to join active litigation for court ordered disclosure of government records related to lead contaminaiton of drinking water by EID and DDW.

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<sup>19</sup> Although the federal government is the real party in interest in FCA Litigation, Utah Attorney Cook failed to notify United States Attorney General Merrick B. Garland of the district court’s order issued to the Salt Lake County Sheriff to seize and sale claims belonging to the United States of America at public auction [Addendum No. 20 at pages 2-3].

V. THE DISTRICT COURT LACKED JURISDICTION TO ORDER THE APPEARANCE OF MR. TRACY BEFORE THE COURT TO IDENTIFY PERSONAL AND REAL PROPERTY FOR SEIZURE AND SALE AT PUBLIC AUCTION

Following service of the Kouris Amended Judgment on June 10, 2020, seven (7) days later Judge Kouris ordered Mr. Tracy to appear before Utah Third District Court Judge Paul B. Parker in 20 days to identify personal and real property under sworn testimony.

The district court lacked jurisdiction to issue such an order.

Under Utah R. Civ. P. 62(a) the court may issue no execution or writ until expiration of 14 days after entry of judgment [and service thereof under Rule 54(e)]. Moreover, as the court's order for Mr. Tracy appear in less than 28 day was sent via regular United States postal service and did not include the ex parte motion and supporting affidavits in violation of Utah R. Civ. P. 7A(d) in connection with Rule 4(2)(A)(1)(C), the district court acted contrary to the limits imposed by Utah court rules of civil procedure and thus devoid of jurisdiction.

As the district court may not execute writ prior to the expiration of 14 days, and order appearance of the judgment debtor prior to the expiration of 28 days without of proper notice and service of process, the subsequent Writ of Execution executed by the court was likewise null and void for lack of jurisdiction.

VI. THE DISTRICT COURT LACKED JURISDICTION TO ORDER THE SEIZURE AND SALE OF FEDERAL PROCEEDINGS FOR RECOVERY OF PAST EMPLOYEMENT WAGES

As noted in the *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E* [Addendum No. 8] the district court lacked jurisdiction to order seizure and sale of exempt employment wages under 15 U.S.C. 1673(a)(1), as identified in the district court’s Writ of Execution under No. 5(c) [Addendum No. 19].

VII. THE DISTRICT COURT LACKED JURISDICTION TO ORDER THE SEIZURE AND SALE OF PROPERTY BELONGING TO AN UNINCORPORATED ASSOCIATION AND NOT THE JUDGMENT DEBTOR

As noted in the *Reply and Request for Hearing – Writ of Execution (Utah R. Civ. P. 64E* [Addendum No. 8], the district court lacked jurisdiction to order the seizure and sale of real property belonging to an unincorporated association and not the judgment debtor identified in the district court’s Writ of Execution under No. 6 [Addendum No. 19].

VIII. THE DISTRICT COURT LACKED JURISDICTION TO REFUSE RECORDING AND DOCKETING OF MOTIONS, OBJECTIONS, AND NOTICE OF APPEAL UNDER A PURPORTED BUT NONEXISTANT PREFILING ORDER IN PENDING LITIGATION

As noted in Mr. Tracy’s *Motion to Vacate Order of Filing* [Addendum No. 7], the district court lacked jurisdiction to refuse recording and docketing of objections, motions, and the notice of appeal of the Kouris Amended Judgment in the court record on grounds

of a purported (but nonexistent) prefiling order in pending litigation [Addenda Nos. 6, 10, 2 and 3].<sup>20</sup>

## CONCLUSION

For the foregoing reasons, this Court should grant Mr. Tracy's petition for writ of extraordinary relief and vacate the district court's Amended Judgment,<sup>21</sup> Orders of Filing,<sup>22</sup> Minute Entries,<sup>23</sup> and Writ of Execution<sup>24</sup> and order Judge Kouris to record all papers, motions and notices previously submitted by Mr. Tracy for proper adjudication of the pending appellate review of the Kouris Judgement by the Utah Court of Appeals. Furthermore, this Court should issue a protective order instructing Judge Kouris to docket and record any paper, motion, or paper filed by Mr. Tracy until which time as the district court issues a prefiling order in pending litigation pursuant to Utah R. Civ. P. 83(b)(4). Should the district court issue a pre-filing order in pending litigation, it must observe the requirements of Utah R. Civ. P. 83(a) and (c) and docket and record any paper, motion or notice filed by Mr. Tracy with the required certifications of subsection (d).

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<sup>20</sup> Even if the district did issue a prefiling order in pending litigation pursuant to Utah R. Civ. P. 83(b)(4), out of an abundance of caution, Mr. Tracy included required certifications and affirmation under criminal penalty pursuant to subsection (d)(1)(C). [Addendum No. 5 at page 2; Addendum No. 8 at page 2; Addendum No. 9 at page 3; and Addendum No. 16 at page 8].

<sup>21</sup> Addendum No. 2.

<sup>22</sup> Addenda Nos. 6 and 10.

<sup>23</sup> Addendum No. 16.

<sup>24</sup> Addendum No. 20.

Respectfully submitted this 11th day of October 2021.

MARK CHRISTOPHER TRACY DBA  
EMIGRATION CANYON HOME OWNERS  
ASSOCIATION

/s/ Mark Christopher Tracy

Mark Christopher Tracy

*Pro se Petitioner*

## CERTIFICATE OF COMPLIANCE

In compliance with the type-volume limitation of Utah R. App. P. 24(g)(1), I, Mark Christopher Tracy, certify that this Petition for Writ of Extraordinary Relief contains **6,840 words**, as determined by the word count feature on Microsoft Word, including headings and footnotes, and excluding the table of contents, table of authorities, addenda, certificates of compliance and service.

In compliance with the typeface requirements of Utah R. App. P. 27(b), I also certify that this brief has been prepared in a proportionally spaced font using Microsoft Word v.16.53 in Time New Romans, 13-point.

I also certify that this brief contains no non-public information in compliance with the non-public information requirements of Utah R. App. P. 21(h).

MARK CHRISTOPHER TRACY DBA  
EMIGRATION CANYON HOME  
OWNERS ASSOCIATION

*/s/ Mark Christopher Tracy*

Mark Christopher Tracy

*Pro se Petitioner*

## CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of October 2021, a true and correct copy of the foregoing Writ of Extraordinary Relief was sent via electronic mail pursuant to Utah R. of App. P. 26(b) to the following counsel of record. As a courtesy, two (2) paper copies will be provided upon request:

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